

NO. 24546

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Petitioner,

vs.

THE HONORABLE GAIL C. NAKATANI, JUDGE OF THE CIRCUIT COURT
OF THE FIRST CIRCUIT, STATE OF HAWAI'I, and
MAXIMO CRISTOBAL, JR., Real Parties in Interest,
Respondents.

ORIGINAL PROCEEDING
(CR. NO. 00-1-1962)

ORDER

Upon consideration of the petition for a writ directed to a judge filed by Petitioner State of Hawai'i and the papers in support, it appears that: (1) the respondent judge entered an order granting Defendant-Respondent Maximo Cristobal, Jr.'s motion for a deferred acceptance of guilty (DAG) plea in State v. Cristobal, Cr. No. 00-1-1962; (2) Petitioner contends Defendant-Respondent Cristobal was ineligible for a DAG plea because he had received a DAG plea in 1981; (3) pursuant to HRS § 853-4(11), a defendant cannot be granted a DAG plea where the defendant has been charged with a felony offense and has been previously granted a DAG plea for a prior offense, regardless of whether the period of deferral has already expired; and (4) Defendant-Respondent Cristobal acknowledges that he previously received a DAG plea and was not entitled to receive a DAG plea in the instant case. Therefore,

IT IS HEREBY ORDERED that: (1) the petition for a writ of mandamus is granted; (2) the order granting the deferred

acceptance of guilty plea in State v. Cristobal, Cr. No. 00-1-1962, is vacated; and (3) this matter is remanded to the circuit court for resentencing.

DATED: Honolulu, Hawai'i, November 16, 2001.